

**VEHICLE  
FUELING AGREEMENT**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the **CITY OF TALLAHASSEE**, a Florida municipal corporation (herein referred to as "City") and **LEON COUNTY, FLORIDA**, a political subdivision of the state of Florida (herein referred to as "County").

WHEREAS, City operates automated fuel dispensing systems located at the City facilities identified in this Agreement (the "Fueling Systems"); and

WHEREAS, the parties desire to enter into an agreement whereby the Fueling Systems can be made available to the County for fueling certain County vehicles, consistent with certain terms and conditions of this Agreement, including without limitation payment for all fuel used.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. City will provide the County access to, and use of, the following Fueling Systems solely for the purpose of dispensing diesel fuel and gasoline to vehicles of the Mosquito/Stormwater Division, Leon County Public Works Department operated by the County:

Fleet Management Division                      400 Dupree Street

City personnel will provide necessary training or instructions regarding use of the Fueling Systems and associated issues such as applicable City policies, safety, facility security, transaction documentation, reporting of malfunctioning equipment, and reporting of damage to equipment or property. The County shall ensure that all personnel using such

Systems have received such training or instruction prior to their use of the Fueling Systems. The County shall be responsible for the proper use of the Fueling Systems by its personnel, for any unauthorized use of the Fueling Systems by its personnel, and for compliance by its personnel with all applicable City policies, restrictions, and regulations and with all applicable safety practices.

2. City shall provide keys, or other appropriate devices, to the County required to utilize the Fueling Systems, and the County shall return such keys or devices to City within two (2) business days following the termination of this Agreement. There will be no charge for initial issuance of such keys or devices; however, the County will immediately report lost keys or devices to the City and will pay, to the City, the City's standard charge for replacement of the same in effect at the time of such replacement.

3. City will render monthly invoices to the County for fuel dispensed under this Agreement. The price for such fuel shall be the current price per gallon from time to time charged to City departments, which price shall include a variable market-based cost and an overhead charge. The County shall pay invoiced amounts to the City within thirty (30) days following the date of such invoices. Measurement of quantities by measuring devices within the Fueling Systems shall be conclusive as to both parties unless those devices are defective or fail to register. If a meter is found to be defective or fails to register, the quantity of fuel dispensed shall be estimated by correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or, if not ascertainable, by estimating the quantity based upon quantities dispensed during

periods under similar conditions when the meter was registering accurately; or by an appropriate billing adjustment, as determined by the City, for any period during which City's meter was defective or failed to register.

4. The term of this Agreement shall commence on the date first written above and will continue until terminated by either party, with or without cause, by the provision of thirty (30) days' prior written notice of such termination.

5. The City and County expressly acknowledge and accept any responsibility it may have under Florida law (including but not limited to Section 768.28, Florida Statutes) for loss, damage or injury to persons or property arising out of or resulting from acts or omissions of its officials or employees.

6. This Agreement may not be amended except by a writing signed by all parties hereto.

7. The County shall not assign any of its rights or obligations under this Agreement without prior written approval by the City, which approval may be given or withheld at the sole discretion of the City.

8. The County, to the extent permitted by Florida law, hereby agrees to indemnify and hold harmless the City, its officials, officers, and employees, from and against any and all claims, damages, actions, liabilities, costs and expenses of any kind, including attorneys' fees and court costs, which may be incurred by any of those indemnitees in connection with loss of life, personal injury, or damage to property arising out of any act or omission of any officer, director, or employee of the County relating to or arising from use of the Fueling Systems. The liability of the County, as set forth in this paragraph, is intended to be consistent with limitations of Florida law, including the

state's waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes. No obligation imposed by this paragraph shall be deemed to alter said waiver or to extend the liability of the County beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which the County may be entitled.

9. The City, to the extent permitted by Florida law, hereby agrees to indemnify and hold harmless the County, its officials, officers, and employees, from and against any and all claims, damages, actions, liabilities, costs and expenses of any kind, including attorneys' fees and court costs, which may be incurred by any of those indemnitees in connection with loss of life, personal injury, or damage to property arising out of any act or omission of any officer, director, or employee of the City relating to or arising from use of the Fueling Systems. The liability of the City, as set forth in this paragraph, is intended to be consistent with limitations of Florida law, including the state's waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes. No obligation imposed by this paragraph shall be deemed to alter said waiver or to extend the liability of the City beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which the City may be entitled.

10. Dispute Resolution:

10.1 The parties shall attempt to resolve any disputes that arise under this Agreement in good faith and in accordance with this Section. The provisions of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process, is hereby encompassed within this Section.

The aggrieved Party shall give written notice to the other party, in the manner set forth in Section 12, setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice".

10.2 The appropriate City and County department heads shall meet at the earliest opportunity, but in any event within 10 days from the date the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, the department heads shall report their decision, in writing, to the City Manager and the County Administrator.

10.3 If the department heads are unable to reconcile the dispute, they shall report their impasse to the City Manager and the County Administrator who shall then convene a meeting at their earliest opportunity, but in any event within 20 days following receipt of the Dispute Notice, to attempt to reconcile the dispute.

10.4 If a dispute is not resolved by the foregoing steps within thirty (30) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.010(c), Florida Rules for Mediators, and shall be selected by the parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 10-day period, then either party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the parties. The costs of the mediator shall be borne equally by the parties.

10.5 If an amicable resolution of a dispute has not been reached within 60 calendar days following selection of the mediator, or by such later date as may be mutually agreed

upon by the parties, then such dispute may be referred to binding arbitration by either party. Such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).

10.5.1 Such arbitration shall be initiated by delivery, from one party (the "Claimant") to the other (the "Respondent"), of a written demand therefor containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either party may make new or different claims by providing the other with written notice thereof specifying the nature of such claims and the amount, if any, involved.

10.5.2 Within ten (10) days following the delivery of such demand, each party shall select an arbitrator and shall deliver written notice of that selection to the other. If either party fails to select an arbitrator within such time, the other party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall confer and shall select a third arbitrator. Each of the arbitrators so appointed shall have experience in local government fueling issues.

10.5.3 The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the third arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48, of the Commercial Arbitration Rules of the American Arbitration Association.

11. This Agreement shall be construed and interpreted in accordance with Florida Law. If any provision of this contract is subsequently held invalid, the remaining provisions shall continue in effect.

12. If written notice to a party is required under this Agreement, such notice shall be given by hand delivery, recognized delivery service, or by first class mail, registered and return receipt requested, to the County as follows:

Leon County Public Works  
2288 Miccosukee Road  
Tallahassee, Florida 32308  
Attn: John Pompey, Fleet Management Director

and to the City as follows:

City of Tallahassee  
Fleet Management Division  
400 Dupree Street  
Tallahassee, FL 32304  
Attn: Terry Lowe

Additionally, all notices and communications relating to performance under this Agreement shall be directed to those persons.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective the day and year first set forth above.

**CITY OF TALLAHASSEE**

Attest:

By: Gary Herndon  
Gary Herndon, City Treasurer-Clerk

By: Anita R. Favors Thompson  
Anita R. Favors Thompson, City Manager

Approved as to form:

Ann G. Miller  
City Attorney

**LEON COUNTY, FLORIDA**

Attest: Robert B. Inzer  
Clerk of Circuit Court

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Cliff Thael, Chair

Approved as to form:

\_\_\_\_\_  
County Attorney